

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE LOUIS TELERICO

*Debtor*

CASE No. 17-50236

JUDGE ALAN M KOSCHIK

CHAPTER 11

**MOTION OF LOUIS TELERICO TO SURCHARGE BANK OF AMERICA, N.A.'S COLLATERAL**

Louis Telerico, the debtor and Debtor in Possession in the within bankruptcy case (“Debtor”), moves the Court for an order pursuant to 11 U.S.C. §506(c) surcharging certain collateral of Bank of America, N.A. (“Motion” and “BOA”).

1. The Court has jurisdiction over this matter under 28 U.S.C §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (C) and (O). The venue of this case and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.

2. Debtor filed this Bankruptcy Case on February 4, 2017 and has continued to operate as Debtor in Possession since that date. No committee of unsecured creditors has been established in this case.

3. The Debtor through a testamentary trust owns a house and approximately 2 acres of land at 545 Bristol Dr., Aurora Ohio, identified by permanent parcel number 03-016-00-00-173-003 and used by the Debtor as his residence (“Home”).

4. The Portage County Treasurer has a real estate tax lien against the Home in the amount of \$424,793.37 that is a first priority lien against the Home (“Tax Lien”).

5. On or about July 25, 2001 the Debtor executed a promissory note payable to Merrill Lynch Credit Corporation nka BOA in the principal amount of \$3,000,000.00 (“BOA Note”). To secure repayment of the Note on or about the same date the Debtor through the trust as mortgagor gave to BOA a mortgage interest in the House that is a second priority lien against it (“BOA Mortgage”). BOA filed proof of claim no. 11 in the Debtor’s bankruptcy case asserting

that \$3,732,925.43 was owed on the BOA Note.

6. Section 506(c) provides:

(c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim, including the payment of all ad valorem property taxes with respect to the property.

7. Under Section 506(c) payment for ad valorem property taxes are expressly recoverable from a secured lender's collateral. As noted above the BOA Mortgage is junior in priority to the Tax Lien. The Debtor has an agreement with the Portage County Treasurer to pay the past due real estate taxes in semiannual installments over five years. On July 14, 2017 the Debtor paid the Portage County Treasurer \$19,733.74 on the current real estate taxes on the Home. The Debtor on July 11, 2018 paid the Portage County Treasurer \$47,099.05 as reflected on his July Operating Report [Doc. 157]. This payment was made on the current real estate taxes on the Home as well as made an initial payoff on the past due real estate taxes. These payments directly benefited BOA because it reduced the amount owed on a lien senior to the BOA Mortgage, thus preserving the value of BOA's collateral.

Other expense of maintaining and preserving the Home are also chargeable to BOA.

Generally, administrative expenses, such as the utility fees here, are satisfied out of the bankruptcy estate. *In re Trim-X, Inc.*, 695 F.2d 296, 301 (7th Cir. 1982). The Bankruptcy Code furnishes an exception to the general rule in § 506(c), which provides that a "trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim." In order to charge a secured creditor with administrative expenses under § 506(c), three elements must be shown: (1) the expenditure was necessary, (2) the amounts expended were reasonable, and (3) the creditor benefitted from the expenses. *In re Trim-X, Inc.*, 695 F.2d at 299. The burden of demonstrating these elements is on the party seeking recovery. See *In re Flagstaff Foodservice Corp.*, 739 F.2d 73, 77 (2d Cir. 1984) ("*Flagstaff I*"); *Brookfield Production Credit Ass'n v. Borron*, 738 F.2d 951, 952 (8th Cir. 1984).

*New Orleans Public Service, Inc. v. First Federal Savings & Loan Ass'n of Warner Robins (In re Delta Towers, Ltd.)*, 924 F.2d 74, 76 (5th Cir. 1991)  
(discussing utility expenses)

8. According to the Debtor's operating reports he has spent \$92,833.44 in repairs and maintenance including \$11,000 for a roof repair and several thousand dollars for repair and maintenance of the HVAC system. The Debtor has sent an additional \$54,799.83 in utilities for keeping the property on an livable. Finally the Debtor spent \$41,610.49 in insuring the Home.

THEREFORE, the Debtor respectfully requests that this Court enter an order surcharging the BOA Mortgage in the total amount of \$256,076.53 for the reasonable, necessary costs and expenses of preserving the Home.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

A copy of this Response was served on the following on the date filed by Notice of Electronic Filing through the Court's ECF/CM system.

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